

**ORDINANCE NO. 2020-08**

**AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS, AMENDING CHAPTER 64 "PEDDLERS, SOLICITORS, AND VENDORS" OF THE CITY OF MONTGOMERY CODE OF ORDINANCES; PROVIDING CERTAIN DEFINITIONS; PROVIDING FOR PENALTIES; REPEALING ALL OTHER CONFLICTING ORDINANCE PROVISIONS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE AFTER PUBLICATION**

**WHEREAS**, the City Council of the City of Montgomery has determined that it is necessary to amend regulations for peddlers, solicitors, and vendors in the interests of the City and its citizens;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS THAT:**

**SECTION I: AMENDMENT TO CODE OF ORDINANCES**

The City Code of Ordinances at Chapter 64 "PEDDLERS, SOLICITORS, AND VENDORS," is hereby amended to read as follows:

**SECTION II. – IN GENERAL**

**Sec. 64-1. PURPOSE.**

The purpose of this chapter is to protect the public health, safety and general welfare of the citizens of the City by providing for controls and regulations of solicitors, vendors, and similar businesses operating within the City.

**Sec. 64-2. - DEFINITIONS.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Display* means to exhibit merchandise in any fashion, including in or upon vehicles, racks, shelves, hangers, or tables or upon the ground.

*Donation and/or Recycling Vendor* means any organization, entity, or individual engaged in the business of accepting textile or household goods for the purpose of reselling or donating accepted items.

*Hawker* means a peddler who makes noise to advertise his merchandise for sale, either by crying, shouting, ringing of bells or other means. The term "hawking" means to engage in the activities of a hawker.

*Merchandise* means goods, wares, services, photographs, magazines, plants, animals, fruit, meat, vegetables or other foods, whether cooked or otherwise, which are not offered for subsequent retail sale.

*Mobile food unit* has the same meaning as assigned to that term by rules adopted by the state board of health under the Texas Food, Drug and Cosmetic Act, V.T.C.A., Health and Safety Code Chapter 431.

*Peddler* means a person, including his agents or employees, who goes from person to person, place to place or house to house, and who sells or offers to sell merchandise then in his possession. The term "peddling" means to engage in the activities of a peddler.

*Roadside food vender* has the same meaning as assigned to that term by rules adopted by the state board of health under the Texas Food, Drug and Cosmetic Act, V.T.C.A., Health and Safety Code Chapter 431.001.

*Solicitor* means a person, including his agents or employees, who goes from person to person, place to place or house to house, selling, offering for sale or taking orders for the sale of merchandise not then in his possession, or who requests the gift or donation of money, property, services or any other thing of value. The term "soliciting" or "solicitation" means to engage in the activities of a solicitor.

*Street* means the entire width between the boundary lines of every way publicly maintained, where any part thereof is open to the use of the public for purposes of vehicular travel, including the ditches, drains, median, sidewalk and esplanade thereof, of any public alley, road, street, avenue, parkway or highway which is located within the city.

*Street festival* means any event, activity or entertainment sponsored by any organization, entity, or individual which is attended by twenty-five (25) or more persons and conducted in whole or in part within any street and for which admission may be charged or at which peddling, hawking, soliciting, transient dealing, roadside food vending or operation of a mobile food unit shall occur. The term "street festival" shall not include a rally conducted in support of or opposition to a candidate for political office or a ballot proposition in any election called by a federal, state or local unit of government.

*Transient dealer* means a person, including his agents or employees, who displays and sells or offers to sell merchandise from a fixed location not upon premises which are owned by the person or for which definite arrangements have been made for the lease, hire or rental for a term of at least one month. The term "transient dealing" means to engage in the activities of a transient dealer. *Unattended* means without the continuous presence of a person to personally receive and issue receipts for donated items at the time they are deposited at the UDB.

*Unattended Donation Bin or UDB* mean an unattended bin, container, dumpster or similar receptacle that is placed outdoors at a location visible from a public place for the purpose of

receiving and/or temporarily storing donated food, clothing, shoes, toys, or other personal property.

**Sec. 64-3. - EXEMPTION FOR INTERSTATE COMMERCE.**

The provisions of this article shall not be deemed applicable to persons engaged in interstate commerce or to any such person to whom application of the provisions of this article would impose a direct and unlawful burden on interstate commerce.

**Sec. 64-4. - OPERATION ON PUBLIC PROPERTY.**

It shall be unlawful for any person to engage in the business of peddling, hawking, soliciting, transient dealing or roadside food vending within any public street or upon any property owned or leased by the City and located within the City that is not a City-designated location and without a valid permit from the City.

**Sec. 64-5. - HOURS OF RESIDENTIAL SOLICITATION.**

It shall be unlawful for any person, except with the express advance consent of the owner, to enter in or upon any home or residential premises within the City to solicit or to sell or offer to sell merchandise, except between the hours of 9:00 a.m. and 7:00 p.m.

**Sec. 64-6. – STREET FESTIVALS.**

Street festivals must obtain a permit from the City prior to the use of any public street or upon any property owned or leased by the City. In addition to the requirements of Section 64-31, street festival organizers are required to provide a Certificate of Insurance listing the City of Montgomery as Additional Insured in an amount established by the City. The organizer of the street festival must maintain and provide to the City a list of all vendors at the event that includes sufficient information for each vendor to comply with the permit application requirements of this chapter. The fee for street festival permits shall be two (2) times the cost of an individual vendor permit. Individual vendors operating under a street festival permit are allowed to operate during festival hours.

**Sec. 64-7. – DONATION AND/OR RECYCLING VENDORS.**

- a) It shall be unlawful for any organization, entity, or individual to conduct donation and/or recycling business activities on any public street or upon any property owned or leased by the City. Donation and/or recycling locations operating on private property within the City must provide notarized written consent of the property owner to the City in addition to vendor application requirements found in Sec. 64-31.

- b) Donation and/or recycling locations must be staffed with at least (1) one attendant continuously during operating hours. Donation bins commonly used in industry practices constitute a location of operation. No donation and/or recycling location shall accept donated goods except between the hours of 8:00 a.m. and 8:00 p.m. Location facilities shall be secured during non-operating hours in a manner that prevents unauthorized items from being left on site. Failure to properly secure the facility location to prevent unlawful dumping is grounds for immediate revocation of the vendor permit.

**Secs. 64-8—64-28. - RESERVED.**

### **SECTION III. - PERMIT**

#### **Sec. 64-29. – PERMIT REQUIRED.**

It shall be unlawful for any person to engage in the business of peddling, hawking, soliciting, providing donation and/or recycling services of textiles and household goods, transient dealing, roadside food vending or operation of a mobile food unit within the City without having first obtained a permit to engage in such business.

#### **Sec. 64-30. – CLASSIFICATIONS; TERM; FEE.**

Except as specifically provided by section 64-32, no permit shall be issued pursuant to this article except upon application accompanied by the fee as currently established or as hereafter adopted by resolution of the city council from time to time.

#### **Sec. 64-31. – APPLICATION.**

Not less than ten days prior to the effective date of any permit granted under this article, each person who shall desire a permit shall make written application therefor to the City Secretary on a form prescribed by the City Secretary. Each application shall be accompanied by the required application fee. Each applicant shall provide the following:

- 1) The applicant's name, address, email address and telephone number.
- 2) If the applicant is a corporation, partnership or association, the address, email address and telephone number of the applicant's principal place of business.
- 3) The class of permit requested.
- 4) A statement that the applicant has had no permit issued pursuant to this article revoked in the previous one-year period.

- 5) A full description of the merchandise to be sold or for which the purchase is to be solicited.

**Sec. 64-32. – EXCEPTIONS; CHARITIES; PUBLIC WELL-BEING; LIMITED DURATION ACTIVITIES.**

- a) Notwithstanding any provision to the contrary contained in this article, no permit fee shall be charged under section 64-30, with respect to the following:
  - 1) Any charitable institution, organization or association organized and conducted exclusively for charitable purposes, and not for private gain or profit.
  - 2) Any individual, association, organization or other entity conducting or staging any concert, exhibition, lecture, entertainment or dance where the gross profits derived therefrom are used solely for charitable or benevolent purposes and not for the purpose of private gain or profit.
  - 3) Any organization, association or other entity holding any convention in the City and sponsoring any entertainment, dance, concert, exhibition, lecture or other event directly and exclusively connected with such convention, provided that any proceeds realized from such convention are devoted to the purposes of the entity sponsoring the same and are not for the purpose of private gain or profit of any individual or entity.
  - 4) Any service club or organization, such as Kiwanis, Rotary or Lions Clubs, nonprofit automobile clubs, chambers of commerce, trade associations, manufacturers' associations, labor organizations, and similar community or professional service clubs or organizations which do not contemplate the distribution of profits or dividends to the members thereof.
- b) Any person, association, organization or other entity claiming an exemption as provided in Subsection (a) of this Section, shall provide such documentation and/or other evidence as may be required by the City Secretary to substantiate and confirm the exempt status of such person, association, organization or other entity.
- c) All other applicable provisions of this article shall pertain to and be applicable to any such exempted persons, associations, organizations or other entities.

**Sec. 64-33. – SPECIAL REQUIREMENTS FOR MOBILE FOOD UNITS AND ROADSIDE FOOD VENDORS.**

- a) In addition to the requirements of Section 64-31, each applicant for a permit to operate a mobile food unit, including a mobile unit for the sale of frozen desserts, or to engage in roadside food vending, shall provide a copy of a current food service permit issued by the county health department.

- b) Each applicant for a permit to operate a mobile food unit shall, in addition to any other requirements, provide proof of financial responsibility as required by the Texas Motor Vehicle Safety Responsibility Act, V.T.C.A., Transportation Code Chapter 601, Subchapter C (V.T.C.A., Transportation Code § 601.051 et seq.) for each person who shall drive or operate the mobile food unit.
- c) Each permit for operation of a mobile food unit or to engage in roadside food vending shall be conditioned upon continuous compliance with all federal, state and local laws or rules adopted under such laws relating to food service, and the permittee shall at all times prominently display a current food service permit issued by the county health department.
- d) Each permit for operation of a mobile food unit shall be conditioned upon continuous compliance with the following:
  - 1) Each driver or operator of a mobile food unit shall maintain financial responsibility as required by the Texas Motor Vehicle Safety Responsibility Act, V.T.C.A., Transportation Code, Chapter 601;
  - 2) No sales shall be made on any street or roadway where posted speed limits are in excess of 30 miles per hour;
  - 3) No mobile food unit shall be parked within 50 feet of any street corner or crosswalk;
  - 4) No person shall sell or solicit sales of merchandise from a mobile food unit within 1,000 feet of any public or private school between the hours of 9:00 a.m. and 5:00 p.m.;
  - 5) No person shall sell or solicit sales of merchandise from a mobile food unit except between the hours of 9:00 a.m. and 9:00 p.m. unless operating under a street festival permit in accordance with Sec. 64-6; and
  - 6) The permit issued pursuant to this article shall at all times be conspicuously posted upon the mobile food unit.

#### **Sec. 64-34. - GRANTING OR DENIAL; ISSUANCE; TRANSFER.**

Within ten days of receipt of an application for a permit required by this article, the City Secretary shall grant such application and issue the permit and identification badges required by this article or such application shall be deemed denied. The City Secretary shall grant any application which on its face complies with the provisions set forth in section 64-31 and, if applicable, section 64-33, and shall deny any application which fails to meet such requirements. Upon written request of the applicant, the City Secretary shall set forth in writing the reasons for the denial of any permit. If granted, the City Secretary shall issue to the applicant a permit which shall set forth the permit number, the activity permitted, the effective and expiration dates of the permit and the name of the person to which the permit has been granted, and the name of each person authorized to engage in the permitted activity. No permit shall be assignable.

#### **Sec. 64-35. - REVOCATION.**

- (a) Any permit issued pursuant to this article may be revoked by the City Secretary if he shall determine that such permit was obtained upon the basis of any intentional false material misrepresentation by the applicant, upon any conduct by the permittee, his agents or employees which arises from or is directly related to the permitted activity and which conduct is a violation of criminal statute, or upon violation by the permittee, his agents or employees of any term or provision of such permit or of this article.
- (b) The City Secretary shall revoke any permit if he shall determine that the permittee, his agents, or employees shall have committed three or more violations of any term or provision of such permit or of this article within the 12-month period immediately preceding such determination, or at any time upon conviction of a violation of any provision of this article.
- (c) Prior to any such revocation, the City Secretary shall provide the permittee notice of any proposed revocation and the grounds therefor and shall afford the permittee an opportunity for hearing. Such notice shall be sufficient if sent to the permittee by registered mail at the address shown on the application for such permit not less than five days prior to the time set forth in such notice of the hearing. Following such hearing, if the City Secretary shall determine that there exist sufficient grounds for revocation of such permit, then such permit shall be deemed immediately revoked.

#### **Sec. 64-36. - APPEALS.**

Any person to whom the City Secretary shall have denied a permit or whose permit shall have been revoked under this article may appeal such denial or revocation to an appeal board consisting of the mayor, the City Attorney and the City Secretary. Such appeal shall be made in writing and filed with the City Secretary not more than five days following such denial or revocation by the City Secretary. Within five days of the filing of such appeal, the City Secretary shall provide notice of the appeal hearing to the appealing party, which notice shall be sufficient if sent to the address of such appealing party as shown on the application for the permit. Following such hearing, if the appeal board shall determine that there exist sufficient grounds for denial or revocation of any such permit, then the decision of the City Secretary shall be deemed final. If the appeal board shall determine that sufficient grounds do not exist for denial or revocation, then the decision of the City Secretary shall be reversed and such permit shall be granted or reinstated.

### **SECTION IV: REPEALING CLAUSE**

This amendment to Ordinance No. 1996-3, dated June 4, 1996, as codified in Chapter 64 of the Code of Ordinances of the City of Montgomery, Montgomery County, Texas, shall prevail and all other Ordinances and parts of Ordinances in conflict are hereby repealed to the extent of any conflict.

## SECTION V: SEVERABILITY

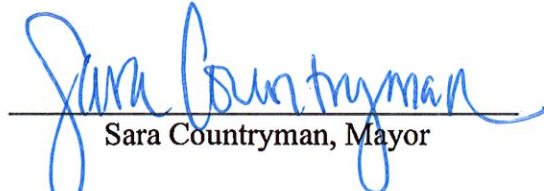
Should any section, subsection, sentence, clause, or phrase of this Ordinance be declared unconstitutional or invalid by a court or competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional or invalid.

## SECTION VI: EFFECTIVE DATE UPON PUBLICATION

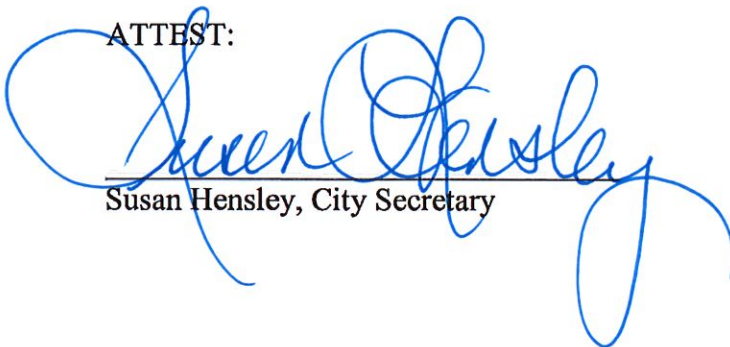
The provisions of this Ordinance will become effective immediately upon adoption by the City Council and publication as provided by law. It is the intent of the Council that the Ordinance apply to every property within the City on which it may apply without violating and state or federal law.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS ON THIS THE 11th DAY OF AUGUST, 2020.

THE CITY OF MONTGOMERY, TEXAS

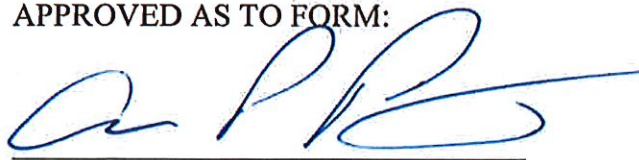
  
Sara Countryman, Mayor

ATTEST:

  
Susan Hensley, City Secretary



APPROVED AS TO FORM:

  
Alan P. Petrov, City Attorney